IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL APPEAL NO.344 of 2001
(Old No.1847 of 1986)

1. Bishan Singh S/o Bharat Singh R/o Village Gharka, Patwari Circle, Dala, Aragarh, Distt. Tehri Garhwal
2. Saila Devi W/o Bishan Singh R/o Village Gharka, Patwari Circle, Dala, Aragarh, Distt. Tehri Garhwal

..... Appellants

Versus

State ..... Respondent

Dated: June 20, 2007

Sri Lokendra Dobhal, learned counsel for the appellant
Sri Amit Bhatt, Addl. GA and Sri M.A. Khan, learned brief holder for the State

HON. DHARAM VEER, J.

This criminal appeal, preferred u/s 374(2) of Code of Criminal Procedure, 1973 *(hereinafter to be referred as Cr.P.C.),* is directed against the judgment and order dated 22.05.1986 passed by Sessions, Judge, Tehri Garhwal, in Session Trial No.09 of 1985, whereby the learned Sessions Judge has convicted the appellants Bishan Singh u/s 325 of Indian Penal Code, 1860 (*hereinafter to be referred as IPC*) and Shaila Devi u/s 325/34 IPC and 323 IPC. Instead of sentencing the appellants at once to any punishment, the learned Sessions Judge has directed that the appellants be released on each of them entering into a bond of Rs.3,000/- with two sureties of like amount each to appear and receive sentence when called upon during a period of two years from the date of judgment and in the meantime to keep the peace and good behaviour. Both the appellants were given the benefit of U.P. First Offenders Probation Act. The appellants were given 7 days time to file the required bonds on each of them furnishing a personal bond of Rs.3,000/- on the date of judgment and order. The appellants were further directed not to change their place of resident without first information to the court. Accused Purna Devi was acquitted by learned

Sessions Judge for an offence punishable u/s 307/34 IPC and 323/34 IPC.

2. In brief the prosecution case is this that at the time of incident on 15.12.1983, wheat crop was standing in the field of Kaushalya Devi P.W.1 situated in Khalsaure in village Gharka, Patwari Circle Dala Aragarh, District Tehri Garhwal. The incident is said to have taken place about 4:00 P.M on 15.12.1983. Appellant Bishan Singh is the husband of the Shaila Devi. It is stated that on the date of the incident, appellant Bishan Singh was taking out stones from the field of Kaushalya Devi in Khalsaur. Appellant Shaila Devi and accused Smt. Purna were carrying away the stones from the field. Then Kaushalya Devi told them not to do so, and then the appellants hurled abuses and threatened to her life and then appellant Bishan Singh assaulted her with Sabbal at her waist. Co-accused Purna Devi jostled Kaushalya Devi due to which she received injuries on her body. After that the appellants threw her below from the buttress. Appellant Bishan Singh further hit Kaushalya with his boot and they left from there after considering her dead. This incidence was seen by P.W.3 Narain Singh. Later on, Barf Singh P.W.4 also arrived on the spot. The incident was narrated to Barf Singh by Narain Singh. From the spot, Kaushalya Devi was taken on a cot to her home. On the next day morning, Kaushalya Devi was carried on a cot to Lata. In the same day morning on 16.12.1983, Barf Singh P.W.4 went to the house of Rai Chand Singh P.W.2, who is brother of Kaushalya Devi. Barf Singh narrated this incident to Rai Chand Singh as it was conveyed to him by Narain Singh. On this information, Rai Chand came to the village Banga where Kaushalya Devi was found at a shop being carried on a cot. Rai Chand Singh also accompanied Kaushalya Devi to Lata where they boarded a bus for Tehri Hospital. In Tehri Hospital, Dr. Pramod Kumar P.W.5 examined the injuries of Smt. Kaushalya Devi at 6:20

P.M. on 16.12.1983. Dr. Pramod Kumar, P.W.5 prepared the injury report of Smt. Kaushalya Devi Ex.Ka-2. At Tehri Hospital, Rai Chand Singh P.W.2 enquired from Kaushalya Devi P.W.1 as to how the incident took place and then Kaushalya Devi told him that appellant Bishan Singh had made an assault on her with Sabbal. Rai Chand Singh, P.W.2 came to court at Tehri and he got a complaint Ex.Ka-1 written by Sri Purab Singh Rawat, Advocate. Then he has prepared the complaint i.e. Ex.Ka-1 and he has moved this application to SDM, Tehri, Pratap Nagar Circle, Tehri Garhwal. The Patwari Chatar Singh Rawat P.W.6 who was posted at Dalla Aragarh Circle on 20.12.1983 received the complaint Ex.Ka-1 by post sent by Rai Chand Singh P.W.2. In the complaint, there was an order of the SDM dated 17.12.1983 which is marked as Ex.Ka-1/1 and the order of the Supervisor Kanungo dated 19.12.1983, which was marked as Ex.Ka-1/2 (In rural hill areas of the Uttarakhand, the Kanungo and Patwari are being vested with the police powers). On the basis of this FIR, Patwari Chatar Singh Rawat P.W.6 prepared the Chik Report Ex.Ka-5 at 3:00 P.M. on 20.12.1983 and made the corresponding entry in GD, copy of the GD is Ex.Ka-6. After that the Patwari (I.O.) had recorded the statement of the witnesses and inspected the spot and prepared the site plan i.e. Ex.Ka-7. The appellant Bishan Singh was arrested on 22.12.1983 by the Patwari Chatar Singh Rawat. On 2.1.1984, the Patwari visited Narendranagar Hospital and recorded the statement of Kaushalya Devi because Kaushalya Devi was shifted from Tehri Hospital to Narendranagar Hospital for further treatment. After completing the investigation, the Patwari submitted the charge-sheet Ex.Ka-8 in the court of CJM, Tehri Garhwal. The CJM, Tehri Garhwal vide his order dated 25.3.1985 committed the case to the court of Sessions. The learned Sessions Judge, Tehri Garhwal has framed the charge on 6.2.1986 against appellant Bishan Singh u/s 307

IPC and appellant Shaila Devi and accused Purna Devi u/s 307/34 IPC and 323/34 IPC. The charges were read over and explained to them. They pleaded not guilty and claimed to be tried.

3. The prosecution in order to prove its case examined P.W.1 Kaushalya Devi, P.W.2 Rai Chand Singh, P.W.3 Narain Singh, P.W.4 Baraf Singh, P.W.5 Dr. Pramod Kumar and P.W.6 Chatar Singh Rawat, Patwari.

4. After that the statements of the appellants Kishan Singh, Shaila Devi and accused Purna Devi were recorded u/s 313 Cr.P.C. who have denied the allegations made against them. However, they did not produce any witness in defence.

5. After hearing learned counsel for the parties and after appreciating the evidence on record, the learned Sessions Judge, Tehri Garhwal vide his judgment and order dated 22.5.1986 convicted the appellants Bishan Singh u/s 325 IPC and Shaila Devi u/s 325/34 and 323 IPC. Instead of sentencing the appellants at once to any punishment, the learned Sessions Judge has directed that the appellants be released on each of them entering into a bond of Rs.3,000/- with two sureties of like amount each to appear and receive sentence when called upon during a period of two years from the date of judgment and in the meantime to keep the peace and good behavior. Both the appellants were given the benefit of U.P. First Offenders Probation Act. The appellants were given 7 days time to file the required bonds on each of them furnishing a personal bond of Rs.3,000/- on the date of judgment and order. The appellants were further directed not to change their place of resident without first information to the court. However, accused Purna Devi was acquitted by learned Sessions Judge from the offence punishable u/s 307/34 IPC and 323/34 IPC. Feeling aggrieved by the judgment and order dated 22.5.1986, the appellants have come up in appeal before this Court.

6. I have heard Sri Lokendra Dobhal, learned counsel for the appellants and Sri Amit Bhatt, Additional GA and Sri M.A. Khan, learned brief holder for the State.

7. The prosecution in order to prove its case produced P.W.1 Smt. Kaushalya Devi who has stated that the appellants were known to her. The incident was in the month of Mangsir, two years were completed and third year was going on, the time was 4:00-5:00 P.M. The incident is of Khalsaure, where she had got her field and on that day, the wheat crop was standing in the field. Bishan Singh was taking the stones from the field and Shaila Devi and Purna Devi were removing the stones from the field. She asked them not to take the stones then Bishan Singh has caused the injury by Sabbal in her waist due to which she fell down on the earth. Then Bishan Singh has kicked her and thrown her from the road. Appellant Shaila Devi and Purna Devi had abused her and hurled stones on her. She had become unconscious. She did not know whether she got the injuries from the stones or not. She had come to her senses in her house in the night. At the time of incident, Narain Singh was also there. On the next day, she was taken to Tehri Hospital by Narain Singh and her brother Rai Chand. In the Tehri Hospital, her x-ray was conducted. She was in the Tehri Hospital for one day and in the Narendranagar Hosptial, she was treated for 3 months. This witness was cross-examined at length but nothing has come out which may create any doubt in her statement. The statement of this witness is trustworthy, reliable and believable.

8. P.W.2 is the Rai Chand Singh who is the brother of the injured Kaushalya Devi. He has stated that appellants were known to him and this incident took place on 15.12.1983. On 16.12.1983 in the morning, Burfa Singh had come to his village then Burfa Singh had told him that from his sister’s field, appellant Bishan Singh was taking out the

stones and Bishan Singh's wife and mother were removing the stones from there. Burfa Singh also told him that appellant Bishan Singh caused injuries to Kaushalya Devi by a Sabbal on her waist and also by kicks. He was also informed that the mother and wife of the Bishan Singh had hurled stones on Kaushalya Devi. He also told him that Kaushalya Devi was in faint condition in her house. He has also stated that after that he came to village Bonga and there was a shop where he met some people who were taking the Kaushalya Devi. Kaushalya Devi was on a cot and she was not in the senses. From there, she was taken to Lata and from Lata, Kaushalya Devi was taken to Tehri by bus and in the Tehri, she was medically examined by the doctor and the x-ray was also taken. He asked from the Kaushalya Devi about this incident in Tehri and then Kaushalya Devi had told him that Bishan Singh beaten her by a Sabbal. Then he has come to the court and the application was prepared by Sri Poorab Singh, Advocate, that application is Ex.Ka-1. This witness was cross-examined at length but nothing has come out which may create any doubt in his statement. The statement of this witness is trustworthy, reliable and believable.

9. P.W.3 is the Narayan Singh who is the eyewitness of the incident. He has stated that the appellants were known to him and Kaushalya Devi was also known to him. The incident was of 15.12.1983 between 4:00-5:00 P.M. He was going to Jaspur from Ghairka God. When he reached at Khalsaure then he saw that appellant Bishan Singh was taking out the stones from the field of Kaushalya. Shaila Devi & Pooran Devi were carrying the stones from there. Kaushalya Devi asked them not to do so, then appellant Bishan Singh have caused injury in the waist of Kaushalya Devi and Kaushalya Devi fell down on the road. Then Bishan Singh hit her by kicks due to which she fell down from the road to another field and she became unconscious. Appellant Shaila Devi and accused

Poorna Devi hurled the stones toward Kaushalya Devi. After that the appellants had gone from there. Thereafter, Barfa Singh had reached on the sport and then Kaushalya Devi was taken to her house on a cot. Next day, Kaushalya Devi was taken to Lata on a cot and from Lata she was taken to Tehri Hospital through bus. This witness was also cross-examined at length but nothing has come out which may create any doubt in his statement. The statement of this witness is trustworthy, reliable and believable.

10. P.W.4 is the Barfa Singh who has stated that the appellants and the injured Kaushalya Devi were known to him. On 15.12.1983 at about 4 o'clock in the evening, when he was going from his village to Ghairva, in the way when he heard the noise, he reached on the spot and then he saw that Kaushalya Devi was lying in the field and Narain Singh was there. He had stated that he has not seen the incident. Narain Singh had narrated the incident to him. Then the Kaushalya Devi was taken to her house on a cot. On the next day on 16.12.1983, he had informed the brother of the Kaushalya Devi Rai Chand about the said incident as Narain Singh had informed him. This witness was also cross-examined at length but nothing has come out which may create any doubt in his statement. The statement of this witness is trustworthy, reliable and believable.

11. P.W.5 is Dr. Pramod Kumar who has examined the Kaushalya Devi on 16.12.1983 at 6:20 P.M. in the Tehri Hospital. He was posted there as a Medical Officer. He found the following injuries on the body of Kaushalya Devi:-

1. *There is a contusion placed on the back on the midline over T_{11}, T_{12}, L_1 & L_2 lumbar vertebrae. The contusion is 5 cms x 3 cms. The contusion is reddish blue.*
2. *There is marked tenderness over the thoracic lumbar spine at T_{11}, T_{12}, L_1 & L_2. There is bony deformity (Localised kyphus) at junction of thoracic and lumbar spine. Movement of the spine are restricted grossly and the patient is unable to move. Patient advised x-ray thoraco lumbar spine.*

3. *There is reddish blue contusion over the front of the chest. The contusion is placed over the body of sternum in the midline at the level of insertion of IIIrd, IVth ribs. The contusion is irregular 3.5 cm x 2 cm.*

12. Dr. Pramod Kumar has also prepared the injury report i.e. Ex.Ka-2. He has also stated that injury Nos.1 and 3 were simple and were approximately 24 hours old. Injury No.2 was kept under observation and x-ray was advised. He has also prepared and x-ray form Ex.Ka-3 in respect of injured Kaushalya Devi who was subjected to x-ray on 17.12.1983. X-ray plate is Ex.1. It was done in the supervision of Dr. Pramod Kumar. On the basis of x-ray, the doctor prepared a supplementary report Ex.Ka-4 and he found that there was a compression fracture of lumbar 1 and 2 vertebrae of spine. There was no evidence of callous formation. Accordingly, injury No.2 was found grievous. The doctor was also of the opinion that injuries no.1 and 2 of Kaushalya Devi were possible to be caused by an assault made by Sabbal, using it as a Lathi, but he was also of the opinion that this possibility was less in respect of injury no.2. None of the injuries were found by the doctor to be dangerous to life.

13. P.W.6 is the Chatar Singh Rawat who is the I.O. of the case, he has stated that since July, 1981, he was posted as Patwari in Dalla Aargarh Circle. On 20.12.1983, he was also posted there. On 20.12.1983, he received a complaint Ex.Ka-1 by post sent by Rai Chand Singh on which the SDM, Tehri has passed an order for investigation. At that time, Sri Rawat was the SDM, Tehri, that order was marked as Ex.Ka-1/1. On 19.12.1983, Supervisor Kanungo ordered him for the investigation of the case. He has also identified his signatures, Ex.Ka-1/2. On 20.12.1983, he has prepared Chik Report Ex.Ka-5 and the entry was made in the G.D. i.e. Ex.Ka-6. During the investigation, he has recorded the statements of the witnesses and he has prepared the site plan i.e. Ex.Ka-7. The appellant Bishan Singh was also arrested by him and

after completing the investigation, he has submitted the charge sheet i.e. Ex.Ka-8.

14. Thereafter, the statements of the appellants Bishan Singh, Shaila Devi and accused Poorna Devi were recorded u/s 313 Cr.P.C., who have denied the allegations made against them and they have stated in their statements that through the field of Kaushalya Devi, they had a right of way and the Kaushalya Devi and her family members have closed the way and due to this enmity, a false case was lodged against them. However, they did not produce any witness in defence.

15. Learned counsel for the appellants Sri Lokendra Dobhal stated at bar that the appeal has become infructuous in view of the fact that as per the order dated 22.5.1986 passed by learned Sessions Judge, Tehri Garhwal, the appellants have executed the personal bonds on the same day on 22.5.1986 and the surety bonds were executed on 27.5.1986. He also submitted that since these personal bonds and the surety bonds were only for two years, hence now the appellants have complied with the order and for this reason, the appeal has become infructuous and hence he prayed that the appeal may be dismissed as infructuous.

16. The evidence of P.W.1 Kaushalya Devi is supported by the evidence of P.W.3 Narain Singh who is the eyewitness and by P.W.5 Dr. Pramod Kumar, who is the Medical Officer. From the evidence of P.W.1 Kaushalya Devi and P.W.3 Narain Singh, it is well established that on 15.12.1983 between 4:00-5:00 P.M. at Khalsaur Name Tok in village Ghairka, Patwari Circle Dala Argarh, District Tehri Garhwal, appellant Bishan Singh has caused the injury on the waist of Kaushalya Devi by Sabbal and the appellant Shaila Devi has hurled the stones towards Kaushalya Devi due to which she had got the injuries and she had become unconscious on the spot. On the next day morning on 16.12.1983, she was taken to Tehri Hospital

where she was medically examined by P.W.5 Dr. Pramod Kumar and later on she was transferred to Narendranagar Hospital for further treatment. Hence, it is clear that the evidence of P.W.1 Kaushalya Devi and P.W.3 Narain Singh, is corroborated by the medical evidence of P.W.5 Dr. Pramod Kumar and the injury report prepared by the doctor, which is Ex.Ka-2. P.W.2 Rai Chand Singh who is the brother of the injured Kaushalya Devi has proved the FIR Ex.Ka-1 and the Patwari P.W.6 Chatar Singh Rawat has proved the Chik Report Ex.Ka-5, Map Ex.Ka-7, charge sheet Ex.Ka-8 and G.D. Ex.Ka-6 and after completing the investigation, he has come to the conclusion that the appellants have caused the injury to the injured Kaushalya Devi.

17. Thus, from the evidence discussed above, it is well established beyond reasonable doubt that the prosecution has proved its case against the appellant Bishan Singh u/s 325 IPC and appellant Shaila Devi u/s 325/34 IPC and also u/s 323 IPC. The learned Sessions Judge, Tehri Garhwal after considering the entire facts and circumstances of the case, instead of sentencing the appellants at once to any punishment, rightly directed that the appellants would be released on each of them entering into a bond of Rs.3,000/- with two sureties of like amount each to appear and receive sentence when called upon during a period of two years from the date of judgment and in the meantime to keep the peace and good behaviour.

18. In view of the above, the judgment and order dated 22.05.1986 passed by Sessions Judge, Tehri Garhwal is hereby confirmed. The appeal is devoid of merit and is hereby dismissed.

(Dharam Veer, J.)

June 20, 2007
Rajeev Dang